

## **DETAILED ACTION**

### ***Priority***

Acknowledgment is made of applicant's claim for foreign priority under 35 U.S.C. 119(a)-(d). The certified copy has been filed in parent Application No. 10/166,064, filed on 11 June 2004.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1-12 are rejected under 35 U.S.C. 102(a) and (e) as being anticipated by Seto et al., U.S. Patent Application Publication, US 2002/0068678 A1.

Seto et al. disclose a soda lime silica glass having overlapping ranges of components and properties with instant claims 1-12. See Abstract, page 2, paragraphs [0050]-[0062] and [0067], and page 3, paragraphs [0085]-[0092]. The compositional ranges and property ranges disclosed by the reference are sufficiently specific to anticipate the compositional limitations and property limitations in claims 1-12. See MPEP 2131.03.

Applicant cannot rely upon the foreign priority papers to overcome this rejection because a translation of said papers has not been made of record in accordance with 37 CFR 1.55. See MPEP § 201.15.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person

having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sasage et al., U.S. Patent, US 6,071,840 in view of El Khiati et al., U.S. Patent 6,063,718.

Sasage et al. teach an infrared and ultraviolet absorbing green glass having overlapping ranges of components and properties with instant claims 1-12 with the exception of Li<sub>2</sub>O. See Abstract, column 2, line 59 to column 3, line 10, column 3, lines 19-45. column 4, lines 6-22, 50-56, column 4, line 65 to column 5, line 2, and column 5, lines 47-57.

Sasage et al. fail to teach the addition of Li<sub>2</sub>O to the glass composition of the instant claims.

El Khiati et al. teach a soda lime silica glass which incorporates 0-3 wt. % Li<sub>2</sub>O in the glass composition as a fluxing agent. See Abstract of El Khiati et al. and column 8, lines 18-22.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have an infrared and ultraviolet absorbing soda lime silica glass of Sasage et al. as suggested by El Khiati et al. because the soda lime silica glass would benefit from the flux agent properties of the Li<sub>2</sub>O component of El Khiati et al. See column 8, lines 18-22 of El Khiati et al.

Claims 1-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Shelestak et al., U.S. Patent, US 6,413,893 in view of El Khiati et al., U.S. Patent 6,063,718.

Shelestak et al. teach a green glass having overlapping ranges of components and properties with instant claims 1-12 with the exception of Li<sub>2</sub>O. See Abstract, column 1, line 60 to column 2, lines 24, column 2, lines 35-45 and 58-57. Shelestak et al. teach that melting and refining aids can be added to the glass. See column 2, lines 58-63.

Shelestak et al. fail to teach the addition of Li<sub>2</sub>O to the glass composition of the instant claims.

El Khiati et al. teach a soda lime silica glass which incorporates 0-3 wt. % Li<sub>2</sub>O in the glass composition as a fluxing agent. See Abstract of El Khiati et al. and column 8, lines 18-22.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have an infrared and ultraviolet absorbing soda lime silica glass of Shelestak et al. as suggested by El Khiati et al. because the soda lime silica glass would benefit from the flux

agent properties of the Li<sub>2</sub>O component of El Khiati et al. See column 8, lines 18-22 of El Khiati et al.

Claims 1-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Jones, U.S. Patent 5,411,922 in view of Nakaguchi et al., U.S. Patent 5,318,931.

Jones teaches a low transmittance gray-green glass having overlapping ranges of components and properties with instant claims 1-12 with the exception of Li<sub>2</sub>O and NiO. See Abstract, column 2, lines 33-61, and column 5, lines 10-35. Jones teaches that melting and refining aids can be added to the glass. See column 2, lines 39-41.

Jones fails to teach the addition of Li<sub>2</sub>O and NiO to the glass composition of the instant claims.

Nakaguchi et al. teach a soda lime silica glass for vehicles, which incorporates 0-0.01 wt % NiO as a colorant and 0-1 wt. % Li<sub>2</sub>O in the glass composition as a melting aid. See Abstract of Nakaguchi et al., column 3, lines 43-46, and column 4, lines 16-18.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have low transmittance soda lime silica glass of Jones as suggested by Nakaguchi et al. because the soda lime silica glass would benefit from the melting aid properties of the Li<sub>2</sub>O component and the coloring of NiO of Nakaguchi et al. See column 3, lines 43-46 and column 4, lines 16-18 of Nakaguchi et al.

Claims 1-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Landa et al., U.S. Patent Application Publication 2003/0078155 in view of Nakaguchi et al., U.S. Patent 5,318,931.

Landa et al. teach a grey glass having overlapping ranges of components and properties with instant claims 1-12 with the exception of Li<sub>2</sub>O. See Abstract, and paragraphs [0017], [0018], [0026], [0027], [0030], [0031], [0036], and [0039]. Landa et al. teach that melting and refining aids can be added to the glass. See paragraph [0031].

Landa et al. fail to teach the addition of Li<sub>2</sub>O to the glass composition of the instant claims.

Nakaguchi et al. teach a soda lime silica glass for vehicles, which incorporates 0-1 wt. % Li<sub>2</sub>O in the glass composition as a melting aid. See Abstract of Nakaguchi et al. and column 4, lines 16-18.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have a grey soda lime silica glass of Landa et al. as suggested by Nakaguchi et al. because the soda lime silica glass would benefit from the melting aid properties of the Li<sub>2</sub>O component of Nakaguchi et al. See column 4, lines 16-18 of Nakaguchi et al.

### ***Double Patenting***

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 1-12 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-4 and 7-10 of U.S. Patent No. 6,858,553. Although the conflicting claims are not identical, they are not patentably distinct from each other because the compositional ranges overlap. Overlapping ranges have been held to establish *prima facie* obviousness. See MPEP 2144.05.

Claims 1-12 are directed to an invention not patentably distinct from claims 1-4 and 7-10 of commonly assigned 6,858,553. Specifically, the compositional and property ranges overlap the instant claims.

The U.S. Patent and Trademark Office normally will not institute an interference between applications or a patent and an application of common ownership (see MPEP § 2302). Commonly assigned 6,858,553, discussed above, would form the basis for a rejection of the noted claims under 35 U.S.C. 103(a) if the commonly assigned case qualifies as prior art under 35 U.S.C. 102(f) or (g) and the conflicting inventions were not commonly owned at the time the invention in this application was made. In order for the examiner to resolve this issue, the assignee is required under 35 U.S.C. 103(c) and 37 CFR 1.78(c) to either show that the conflicting inventions were commonly owned at the time the invention in this application was made or to name the prior inventor of the conflicting subject matter. Failure to comply with this requirement will result in a holding of abandonment of the application.

A showing that the inventions were commonly owned at the time the invention in this application was made will preclude a rejection under 35 U.S.C. 103(a) based upon the commonly assigned case as a reference under 35 U.S.C. 102(f) or (g), or 35 U.S.C. 102(e) for applications filed on or after November 29, 1999.

### ***Conclusion***

The additional references cited on the 892 have been cited as art of interest since they are cumulative to or less than the art relied upon in the rejections above.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to ELIZABETH A. BOLDEN whose telephone number is (571)272-1363. The examiner can normally be reached on 10 am to 6:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jerry Lorengo can be reached on 571-272-1233. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 1793

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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